

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID D. EDWARDS, a/k/a ROBERT E.
CURETON,

Defendant-Appellant.

UNPUBLISHED

April 3, 2007

No. 263003

Wayne Circuit Court

LC Nos. 98-004201

00-008883-01

Before: White, P.J., and Zahra and Kelly, JJ.

ZAHRA, J. (*dissenting*)

I respectfully dissent. A trial court has authority to resentence a defendant if the original sentence was invalid, but it “may not modify a valid sentence after it has been imposed except as provided by law.” MCR 6.429(A). A sentence is invalid when it exceeds statutory limits, is procured through fraud on the court by misrepresentation of information, is based on constitutionally impermissible grounds, is based on improper assumptions of guilt, is based on a misconception of law, is based on inaccurate information, or conforms to local sentencing policy rather than individualized facts. *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997); *People v Thenghkam*, 240 Mich App 29, 70; 610 NW2d 571 (2000), overruled in part on other grounds by *People v Petty*, 469 Mich 108, 117; 665 NW2d 443 (2003).

Here, the court believed defendant was eligible for treatment at the Gateway program to which it sentenced him originally in lieu of prison. Defendant reported to the court that Gateway staff refused to admit him because he was ineligible. Therefore the court concluded the original sentence was based upon inaccurate information, making it invalid. Accordingly, the trial court properly re-sentenced defendant.

I would affirm.

/s/ Brian K. Zahra